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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No 897

JAMES M. CASIDA, ET AL.,

Petitioners

vs.

INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, AND LOCAL 351, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,

Respondents

MOTION FOR REHEARING

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TO THE SUPREME COURT OF THE UNITED STATES:

Since the filing of petitioners last Brief in this Court three things have occurred which make a reconsideration of the Petition for a Writ of Certiorari proper and imperative:

1. Petitioners have filed a Petition with the National Labor Relations Board in Washington, D. C. requesting that the Judgment of the trial Court be enforced, and that a ruling be made on the question of pre-emption.

2. This Court granted a Writ of Certiorari in Hanna Mining Company vs. Marine Engineers Beneficial Association Number 527 involving similar questions of pre-emption and the effect of a refusal of the NLRB to issue a complaint against the Union.

3. The Court must have overlooked the breach of a contractual obligation by the respondent Unions.

(1) In an effort to guess at what this Court had in mind in refusing their Petition for a Writ of Certiorari, the Petitioners have filed a Petition with National Labor Relations Board in Washington requesting that the Judgment of the Trial Court be treated as a claim against the respondent Unions, and that the Board furnish relief. We respectfully urge that this Court should know what disposition is going to be made of the Petitioners' wrongs by the National Labor Relations Board before it turns the petitioners away without a remedy.

(2) This Court granted a Petition for a Writ in Hanna Mining Company No. 527 which involved only a few thousand dollars worth of property rights. The 28 petitioners now before this Court have had their careers destroyed; have lost their pensions and fringe benefits; and have been reduced to working at jobs paying them less than half the amount of money they made before the respondent Unions breached their contractual obligation, and made the fraudulent representations which caused petitioners to lose their jobs and their hope for the future. Turn them out, and a rank miscarriage of justice will be stamped "APPROVED."

(5) The Trial Court held that the respondents were under an implied contract obligation to the petitioners; that the respondents breached that implied contract obligation; and that the petitioners received damages aggregating $1,186,000.00 as a result . It is true! The business agent testified that each member pays monthly dues of $3.00; that $1.90 of that sum goes to the local; and the remaining $1.10 per month goes to the international (SF Volume 7 page 224). In return, the Union became obligated by virtue of the contract between it and its members to exercise at last reasonable care to inform them on how to conduct themselves in carrying out a strike. The respondents business agent testified:

> "Q. So, I take it, then, that one of the things that the member gets when he joins up with the International Union of Operating Engineers is the right to advice and counsel from the International?
>
> "A. He is entitled to that, sir; yes, sir.
>
> "Q. Well, at any rate, when these men joined the International Union of Operating Engineers, they became entitled to the assistance and to the counsel and advice of that Union, didn't they?
>
> "A. Yes, sir." (S. F. Vol. 7, p. 224).

Mr. Looney, the vice-president of Local 351, testified by deposition;

> "Q. Was it the duty of the Union to keep its members well informed and advised as to what their rights and duties (were) connected with the carrying out of the strike?
>
> "A. Yes, sir." (S.F. Vol. 3 p. 137).

This Court has stated that when contract obligations between members and their Union are violated, the violation of that contractual right is "within the cognizance of Federal and State Courts." You said so in Humphrey vs. Moore 11 Lawyers Edition 2d 370:

> ". . . Although there are differing views on whether a violation of the duty of fair representation is an unfair labor practice under the Labor Management Relations Act, it is not necessary for us to resolve that difference here. Even if it is, or arguably may be, an unfair labor practice, the complaint here alleged that Moore's discharge would violate the contract and was therefore within the cognizance of federal and state courts, Smith vs. Evening News Association, supra, subject of course, to the applicable federal law." (11 L. Ed. 2d 378-9.)"

We understand full well, and have always been extremely fearful of the fact, that this Court does not regard itself as "a court of general errors and appeals": Justice John M. Harlan 34 Okla. Bar Journal 1469-1450. Nevertheless, where the State Court has expressly stated that it was controlled by a decision of the Supreme Court of the United States, we submit that this Court has a duty to correct the misapprehension of the State Court. Certainly, it should be done in a case where the economic future of twenty-eight men and their families have been destroyed by the willful and fraudulent representations of the Union leadership, and particularly, when that misconduct involves a breach of contract between the Union member and his Union.

Does the Court know that the petitioners went to

the NLRB shortly after they had been discharged by the Phillips Petroleum Company seeking an order for their reinstatement and back pay: 33 Individual Complainants vs. Phillips Petroleum Company, Cases No. 16-CA-1116 through 1146 and 1149-1150.? On March 13, 1959 the General Counsel for the NLRB issued a letter holding that "The General Counsel sustains the ruling of the Regional Director. Like the Director, the General Counsel concludes that there is insufficient evidence of violations to warrant further proceedings." In their briefs before the NLRB, the unions accepted equal responsibility with Phillips Petroleum Company and absolved the Petitioners of any wrong-doing. Since the General Counsel had, in effect, held that the conduct involved was not "concerted activity" and was not "protected" by the LMRA, Petitioners filed the present suit in the State Court against the respondent unions for breach of implied contract obligation, and for damages resulting from the fraudulent representations of the respondents' agents and alteregos. Obviously, th NLRB was wrong in refusing to issue a complaint or the State Court is wrong in holding that the activities were pre-empted because of the "concerted activity" or "protected" provisions of the LMRA. It necessarily follows, that this Court is wrong in refusing the Writ because it leaves the petitioners without a remedy in a case that the Board has held is not pre-empted. Surely the Supreme Court should look into the matter.

If it is to be the law of the land that a Union can breach its implied contract with a member, and by fraud-

ulent representations mislead a member into committing a breach of the peace against the peace and dignity of his State, and cause him to lose his job and fringe benefits as a result, then the Supreme Court of the United States should say so. The matter should not be left in the state of confusion in which the decision of the State Court leaves it in this case: With the Supreme Court of the United States saying in Humphrey vs. Moore, 11 Lawyers Edition 2d 370, that the breach of contractual obligations between a Union and its members is "within the cognizance of Federal and State Courts"; with most State Courts taking the position that they will assume jurisdiction in a case of this kind until the Supreme Court of the United States announces the contrary: Lockridge v. Amalgamated Association of St. Elec. Ry., etc., Employees, 369 Pac. 2d 1006, 1010; with the Supreme Court of Texas taking the position that once they have been "knocked down" by the Supreme Court of the United States, they will hold everything pre-empted; and with the State Court holding that a "hiring hall" case, Plumbers' Union v. Borden, 373 U.S. 690, controls this breach of contract and fraudulent representation case.

This case will have greater impact upon the field of labor law than any case decided by this Court in the last twenty years. It should be used to establish an area of responsibility between a Union and its mmbers. The matter should not be summarily dismissed on a Petition for Writ of Certiorari.

WHEREFORE, Petitioners pray that the Court set aside the Order refusing a Petition for a Writ of Certi-

orari; grant the Petitioners a Writ of Certiorari; and in any event that the Court refrain from passing upon this Motion for Rehearing until the National Labor Relations Board acts upon the Petitioners' Petition with the Board, and a determination is made of what is to be done about the wrongs inflicted upon the petitioners by the respondents after this matter leaves this Court.

Respectfully Submitted,

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CERTIFICATE

I, Albert Smith, one of the attorneys of record for the petitioners, and a member of the bar of the Supreme Court of the United States, do hereby certify that this Motion for Rehearing is presented in good faith and not for delay. The Motion is restricted to the grounds above specified.

I further certify that I have mailed a copy of this Motion for Rehearing to Mullinax, Wells, Morris & Mauzy, Arthur Mitchell, Sam Houston Clinton, Jr., and Woll, Mayer and St. Antoine, at their respective post office addresses in properly stamped and sealed envelopes and that the foregoing attorneys represent all of the respondents in this cause.

Albert Smith

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